

HOUSE BILL REPORT

ESHB 1332

As Passed House:

February 22, 2011

Title: An act relating to the joint provision and management of municipal water, wastewater, storm and flood water, and related utility services.

Brief Description: Providing for the joint provision and management of municipal water, wastewater, storm and flood water, and related utility services.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Eddy, Anderson, Goodman, Takko, Liias, Springer, Rodne, Hurst and Tharinger).

Brief History:

Committee Activity:

Local Government: 1/26/11, 1/28/11 [DPS].

Floor Activity:

Passed House: 2/22/11, 92-2.

Brief Summary of Engrossed Substitute Bill

- Authorizes two or more local governments to form Joint Municipal Utility Services Authorities (Authorities) for the purpose of providing water-related utility services to participating local governments.
- Establishes requirements for the formation and operation of Authorities.
- Specifies powers and governance provisions for Authorities, including general operational and financial powers, exemptions from certain tax requirements, and requirements pertaining to tortious conduct by local governments.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Takko, Chair; Tharinger, Vice Chair; Angel, Ranking Minority Member; Asay, Assistant Ranking Minority Member; Fitzgibbon, Rodne, Smith, Springer and Upthegrove.

Staff: Ethan Moreno (786-7386).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Provision of Water-Related Utility Services by Local Governments.

General purpose and selected special purpose local governments are authorized to provide water-related utility services. For example, counties, individually or in conjunction with other counties, may establish, operate, finance, and maintain a system or systems of water supply and sanitary and storm sewers within all or a portion of the county. A county also may, as part of a system of sewerage, exercise powers pertaining to storm water, flood control, pollution prevention, and drainage services and activities.

Cities and towns may provide for the sewerage, drainage, and water supply of the city or town, and may establish, construct, and maintain water supply systems and systems of sewers and drains within or without their corporate limits. In addition to broad provision, control and regulation powers, cities and towns may participate in and expend revenue on cooperative watershed management actions related to water supply, water quality, and water resource protection and management.

Selected special purpose districts also have powers related to the provision of water-related utility services. For example, water-sewer districts may purchase, construct, maintain, and supply waterworks to furnish water to inhabitants within and outside of the district, and may develop and operate systems of sewers and drainage. Water-sewer districts may also create facilities, systems, and programs for the collection, interception, treatment, and disposal of wastewater, and for the control of pollution from the wastewater. Public utility districts (PUDs) may construct, purchase, and operate water works and irrigation plants and systems, within and outside of district boundaries, for the purpose of furnishing persons with an ample supply of water for all purposes. The PUDs are also given full and exclusive authority to sell, regulate, and control the use and distribution of water populating their systems.

Interlocal Cooperation Act/Watershed Management Partnerships.

Under the Interlocal Cooperation Act (ICA), public agencies, including local governments, are authorized to contract with one another to provide services either through cooperative action or when one or more agencies pay another for a service. A "public agency" for purposes of interlocal agreements includes any agency, political subdivision, or unit of local government. The term specifically includes municipal corporations, special purpose districts, local service districts, state agencies, federal agencies, recognized Indian tribes, and other states' political subdivisions.

In addition to provisions governing general cooperative actions between public agencies, the ICA authorizes counties, cities, and selected special purpose districts to enter into agreements to form watershed management partnerships. The participating entities may expend 10 percent of their water-related revenues for watershed management plan projects or activities that are in addition to the existing water-related services or activities of the county, city, or district.

Actions Against Political Subdivisions, Municipal, and Quasi-Municipal Corporations.

All local governmental entities, whether acting in a governmental or proprietary capacity, are liable for damages arising out of tortious (*i.e.*, wrongful) conduct by their officers, employees, or volunteers while performing, or in good faith purporting to perform, official

duties. The term "local governmental entities," for purposes of tortious conduct provisions, includes counties, cities, towns, municipal corporations, quasi-municipal corporations, and public hospitals.

Summary of Engrossed Substitute Bill:

Joint Municipal Utility Services Authority: Formation, Membership, and Services.

A Joint Municipal Utility Services Authority (Authority) may be formed by two or more members to perform or provide any or all of the utility service or services that all of its members, other than tribal government members, perform or provide. A "member" for purposes of Authority provisions, may be a county, city, town, special purpose district, or other unit of local government in Washington or another state that provides utility services and is party to an agreement forming an Authority. The term "member" also includes federally recognized Indian tribes.

"Utility services" is defined to mean any or all of specified functions, including:

- the provision of retail or wholesale water supply and conservation services;
- the provision of wastewater, sewage, or septage collection, handling, treatment, transmission, or disposal services; and
- the management and handling of storm water, surface water, drainage, and flood waters.

With limited exceptions, at the time of execution of an agreement to form an Authority, each member must be providing the type of utility service or services that will be provided by the Authority. The agreement, which must be filed with the Secretary of State, must be approved by the legislative authority of each member organization. The date of filing is the date of formation, and the formation and activities of an Authority, including the admission or withdrawal of members, are not subject to review by a boundary review board.

Formed Authorities are municipal corporations and are authorized to perform or provide any or all of the utility services that all of its members, excepting tribal government members, perform or provide. Authorities are entitled to all immunities and exemptions that apply to local governmental entities under tortious conduct provisions specified in statute. Authorities are subject to Washington's public records and open public meetings acts and the code of ethics for municipal officers, and may be audited by the State Auditor.

The formation and operation of an Authority does not diminish a member's powers in connection with its provision or management of utility services or its taxing power with respect to its services, nor does the formation and operation of an authority diminish the authority of local governments to enter into agreements under the ICA or agreements formed under the ICA. Additionally, the formation and operation of an Authority does not impair or diminish valid water rights.

Corporate Powers.

For the purpose of providing utility services, Authorities are entitled to exercise numerous powers, including the power to:

- sue and be sued;

- acquire and fully control property and property rights, including water rights and other assets;
- incur liabilities, including issuing bonds;
- employ persons and fix salaries;
- determine fees, rates, and charges for services;
- compel qualifying property owners to connect private drain and sewer systems to systems owned and operated by the Authority, or to participate in and follow requirements for on-site systems; and
- exercise eminent domain.

Authorities do not have the power to levy taxes.

Asset Transfer and Availability: Member Authorizations.

Members of an Authority, for the purpose of assisting the Authority in providing utility services, are authorized to transfer or otherwise make available assets of member organizations, including money, real property, and water rights, to an Authority with or without payment or other consideration. The transfer and asset availability provisions are not required to be submitted and approved by the electors of the members.

Formation and Governance Agreements.

A joint municipal utility services agreement that forms and governs an Authority must include numerous provisions, including provisions that:

- identify members and specify terms or conditions for joining or withdrawing from the Authority;
- specify how the number of directors of the Authority's board will be determined and how those directors will be appointed (each director must be an elected official);
- describe how the agreement may be amended; and
- describe how rates and charges imposed by the Authority, if any, will be determined.

Conversion of Existing Entities into Authorities.

Any intergovernmental entity formed under the Interlocal Cooperation Act (ICA) or other applicable law may be converted into an Authority and is entitled to all powers and privileges available to Authorities if delineated eligibility and procedural requirements are met.

Tortious Conduct, Taxation, and Miscellaneous Provisions.

Tortious conduct provisions are amended to specify that Authorities and entities created by public agencies under the ICA are considered "local governmental entities" and are subject to statutes governing tortious conduct claims involving these entities.

Payments between or any transfers of assets to or from an Authority and its members are exempted from business and occupation taxes and public utility taxes. Additionally, Authority property is exempt from taxation, and sales tax provisions do not apply to any sales or transfers made to or from an Authority and its members.

Flood control districts and flood control zone districts are expressly authorized to participate in watershed management arrangements and actions, rather than watershed management partnerships, including those authorized under the ICA and provisions governing Authorities.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Cascade Water Alliance is an example of previous efforts to form a regional water service provider, but current options for forming a regional provider are limited and insufficient. Cities, towns, and special purpose districts are trying to find new ways to coordinate and provide water services, and this bill is an attempt to promote that coordination. It is also the result of a study by the departments of Health and Ecology to determine what type of entity would be necessary to effectively provide regional water services.

The purpose of this bill is to improve the ability of water-related utilities to work together and better provide services. The bill does not create new powers for local governments, but does represent an improved framework that municipalities throughout the state could utilize. Although interlocal agreements can be used to jointly provide utility services, these agreements are insufficient to alleviate liability concerns of participating local governments.

This bill is consistent with the water policy act of 1971 and will provide a significant tool that will assist in forming regional water systems. This legislation will also help to facilitate the creation of multi-jurisdictional flood control districts and will help larger and smaller counties efficiently provide utility services.

The Department of Ecology (DOE) believes the bill is well-conceived, well-drafted and will provide a good framework for Authorities. The DOE also believes that if issues arise with the implementation of the bill, the agency will be able to work with member jurisdictions to appropriately resolve them.

(Opposed) None.

Persons Testifying: Representative Eddy, prime sponsor; Hugh Spitzer, Foster Pepper; John Peterson, Clark Regional Waste Water; Bob Mack, Tacoma Public Utilities; Robert Johnson, Lewis County Board of Commissioners; and Evan Sheffels, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.